IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE S.SIRI JAGAN

FRIDAY, THE 26TH OCTOBER 2007 / 4TH KARTHIKA 1929

WP(C).No. 26512 of 2006(F)

PETITIONER:

NANDAKUMAR. C., L.P.S.A.,
M.R.L.P. SCHOOL, CHRUKULAMBA,
P.O. VATTALUR, MALAPPURAM DISTRICT.

BY ADV. SRI.ELVIN PETER P.J.

RESPONDENTS:
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1. THE STATE OF KERALA, REPRESENTED BY
ITS SECRETARY, GENERAL EDUCATION DEPARTMENT
SECRETARIAT, THIRUVANANTHAPURAM.

2. THE ASSISTANT EDUCATIONAL OFFICER,
MANKADA.

3. THE HEADMASTER, M.R.L.P. SCHOOL,
CHERUKULAMBA, P.O. VATTALUR,
MALAPPURAM DISTRICT.

BY SR. GOVERNMENT PLEADER SMT. M.R. SREELATHA.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 26/10/2007, THE COURT ON 26/10/2007 DELIVERED THE FOLLOWING:

W.P.(C)NO. 26512 OF 2006

EXT.P1: COPY OF THE ORDER DATED 14.12.1998 APPOINTING THE PETITIONER AS LPSA IN M.R.L.P. SCHOOL, CHERUKULAMBA.

EXT.P2: COPY OF THE ORDER DATED 6.6.1989 OF THE GOVERNMENT.

EXT.P3: COPY OF THE CIRCULAR DATED 1.3.1995 OF THE GOVERNMENT.

EXT.P4: COPY OF THE OPTION STATEMENT ALONG WITH THE DECLARATION SUBMITTED BY THE PETITIONER ON 14.11.2005.

EXT.P5: COPY OF THE ORDER DATED 16.11.2005 OF THE 2ND RESPONDENT.

TRUE COPY

PA TO JUDGE.

S. SIRI JAGAN, J.

W.P.(C)No.26512 OF 2006

Dated this the 26th day of October, 2007

JUDGMENT

After putting in 526 days of provisional service in Government Schools and 83 days of service in an aided school, the petitioner started his continuous service in another aided school from 14.12.1988. His grievance in this writ petition is that his past provisional service has not been counted for the purpose of granting higher grade. According to him, as per the Government orders in force, he is eligible for counting those provisional service also for the purpose of higher grade. Apparently on the basis of Circular No.29065/J2/98/G.Edn. dated 8.5.2001 cancelling the earlier Circular No.52373/J2/98/G.Edn. dated 6.3.1998, the respondents are not considering the petitioner's claim for higher grade taking into account the provisional service also. The petitioner would contend that the petitioner's claim for higher grade taking into account the provisional service also does not emanate from the circulars in question, but on the basis of Government orders granting that

benefit. Therefore according to the petitioner, the cancellation of the earlier circular by the latter circular would not affect his right to get the provisional service also reckoned for the purpose of granting higher grade.

2. The learned Government pleader submits that such provisional service can be taken into account for the purpose of higher grade only if that provisional service can be counted for the purpose of increment as per the Government order in question. She would rely on judgment in W.A.No.288/05 wherein it has been held that such provisional service cannot be counted for the purpose of granting increments.

3. I have considered the rival contentions. However, I am not inclined to go into the contentions on merit in view of the fact that in paragraph 5 of the counter affidavit filed on behalf of the 1st respondent, it is stated thus:

> "The petitioner submitted his option and the Statement for the senior grade fixation completion of 18 years of service as on 1.5.2005 by reckoning the provisional service rendered in Government Schools and the aided school service. But the same was returned to the petitioner on the reason stating that orders if any

> to reckon the Government School Service to the aided school for the grade may be quoted in the option form and the fixation statement and to produce copy for verification under Exhibit P5 order. The proposal has not been rejected as stated in this para and not stated that no orders to the above effect are available. But the petitioner has failed to produce the required orders to the 2nd respondent and hence Ext.P5 order is not illegal. If copies of relevant orders have been produced and the proposal resubmitted, the same would have been considered. Further if he has grievance against Ext.P5 order, he can appeal to higher authorities/Government, for which there is provision.

That submission would make it clear that the 1st respondent has not considered the claim of the petitioner on merits on the basis of the Government order in question. As such, I need not prejudge the issue now. Accordingly, this writ petition is disposed of on the following terms.

The petitioner shall file a detailed representation put forward his claim supported by Government orders within a period of two weeks from the date of receipt of a copy of this

judgment. The 1st respondent shall consider his claim in accordance with law, as expeditiously as possible, at any rate, within two months from the date of receipt of the representation.

S. SIRI JAGAN, JUDGE

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